

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 2:11-0653

\$9,080.00, MORE OR LESS,
in United States Currency,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending is the United States' motion to suspend the scheduling order, filed October 12, 2012.

Discovery requests were scheduled to be completed by May 25, 2012, with discovery to close on July 9, 2012. On May 25, 2012, the United States served its first set of interrogatories upon Mauryel Garrett, the lone interested party in the case, through his counsel, William H. Harding. No responses were forthcoming. On July 26, 2012, the United States moved to compel. The United States Magistrate Judge granted the motion to compel and directed that responses be filed no later than August 7, 2012. Mr. Garrett's counsel ignored the magistrate judge's order.

On July 30, 2012, the United States moved for summary judgment. As of August 27, 2012, the court had not received a memorandum in opposition to summary judgment from counsel for Mr.

Garrett. On that date, Mr. Garrett was directed by order "to respond to the motion [for summary judgment] no later than September 10, 2012, or, alternatively, advise the court in writing that the relief requested by the United States is unopposed." (Ord. at 1). Mr. Garrett's counsel ignored the August 27, 2012, order.

On September 27, 2012, the court directed both Mr. Harding and Mr. Garrett to appear for a hearing on October 5, 2012, to either tender for filing a summary judgment opposition brief or, alternatively, advise the court that the relief requested by the United States was unopposed. On October 3, 2012, Mr. Garrett, by counsel, filed his opposition brief. Consequently, the October 5, 2012, hearing was canceled. On October 4, 2012, the United States moved the magistrate judge for sanctions based upon Mr. Garrett's counsel's failure to comply with the magistrate judge's discovery order.


On October 11, 2012, the United States replied to the late summary judgment opposition brief. The next day, it filed the instant motion to suspend the scheduling order. The United States asserts that it is prejudiced in its attempts to proceed further with the case pending receipt of Mr. Garrett's discovery responses, a ruling by the magistrate judge on the motion for sanctions, and a ruling as to its summary judgment request.

Finding good cause, it is ORDERED that the scheduling order be, and it hereby is, stayed pending the further order of the court and following rulings on both the motion for summary judgment and for sanctions, but only to the extent that the parties need not comply with the following deadlines found in the scheduling order:

Plaintiff draft of pretrial order to defendant.
Integrated pretrial order filed by defendant.
Pretrial conference.
Proposed jury instructions filed.
Final settlement conference.
Trial.

The Clerk is directed to transmit copies of this written opinion and order to counsel of record.

ENTER: October 19, 2012


John T. Copenhaver, Jr.
United States District Judge